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EXAMINER

MCLEOD, MARSHALL M

ART UNIT

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4152

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/815,008	Applicant(s) BATRA ET AL.	
	Examiner MARSHALL MCLEOD	Art Unit 4152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>17 October 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-40 are pending in this action.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the submitted drawings are informal. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

2. Examiner objects to the specifications, because they are no descriptions for the figures provided in the application.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 36-40 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter.

4. With respect to claim 36, the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, software *per se*, which is not one of the statutory subject matters.

5. With respect to claim 37, the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, software *per se*, which is not one of the statutory subject matters.

6. With respect to claim 38, the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a

statutory category. They are, at best, software *per se*, which is not one of the statutory subject matters.

7. With respect to claim 39, the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, software *per se*, which is not one of the statutory subject matters.

8. With respect to claim 40, the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, software *per se*, which is not one of the statutory subject matters.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 28-29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. With respect to claim 21, lines (5-12), “the repositories having formal and temporal inconsistencies. It is not clearly understood what formal inconsistencies are received and what temporal inconsistencies are enhanced. In addition the specification does not make clear the meaning of these terms. Appropriate clarification is required.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-16, 18-24, 27-29, and 30-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Ding et al. (Patent No US 6,691,067 B1), hereinafter Ding.

14. With respect to claim 1, Ding discloses causing separate executable agents each to perform tasks on associated information that is changing over time, to produce

current information (Column 2, lines 51-54), delivering inputs and outputs among agents to enable assembly of a body of aggregated and summarized management information (Column 2, lines 54-64 i.e. agent software collects metric data (takes the input) and stores sampled data into a registry (the output)), based on the current information, to be used to manage at least a portion of an enterprise (Column 2, lines 54-64).

15. With respect to claim 2, Ding discloses the agents are organized in accordance with a network model (Column 2, lines 44-50).

16. With respect to claim 3, Ding discloses the agents have ports to send (Column 7, lines 22-24) and receive the inputs and outputs (Column 7, lines 39-44).

17. With respect to claim 4, Ding discloses at least some of the inputs and outputs pass through routing devices between agents (Column 22, lines 1-4).

18. With respect to claim 5, Ding discloses routing devices comprising hubs, routers, and gateways (Column 22, lines 1-4).

19. With respect to claim 6, Ding discloses agents are part of a network that conforms to the network model and includes network links to deliver the inputs and outputs (Column 2, lines 44-59).

Art Unit: 4152

20. With respect to claim 7, Ding discloses at least some of the links are temporary (Column 5, lines 59-64,.ie. not connected through a LAN but connected via the internet, which is a temporary connection).

21. With respect to claim 8, Ding discloses that the temporary links define a dynamically configured network that conforms to the network model (Column 5, lines 59-64,.ie. not connected through a LAN but connected via the internet, which is a temporary dynamically configured network connection).

22. With respect to claim 9, Ding discloses some of the links are persistent (Column 5, lines 59-64,.ie. not connected through a LAN but connected via the internet which uses persistent links to connect users to various data/databases).

23. With respect to claim 10, Ding discloses a group of the agents operate in a subnetwork that conforms to the network model, and the subnetwork comprises a portion of a network that conforms to the network model (Column 5, lines 29-31).

24. With respect to claim 11, Ding discloses another instance of the subnetwork comprises a portion of another network that conforms to the network model (Column 5, lines 29-31).

Art Unit: 4152

25. With respect to claim 12, Ding discloses he agents are distributed (Figure 1; Column 5, lines 31-33).

26. With respect to claim 13, Ding discloses agents are distributed at least in part geographically (Column 5, lines 62-64).

27. With respect to claim 14, Ding discloses at least some of the associated information is stored in databases (Column 7, lines 22-28).

28. With respect to claim 15, Ding discloses at least some of the inputs and outputs comprise events (Column 7, lines 39-44).

29. With respect to claim 16, Ding discloses some of the inputs and outputs comprise data (Column 7, lines 50-55).

30. With respect to claim 18, Ding discloses agents comprise at least part of a network that conforms to the network model and a process external to the network makes requests to the network for at least portions of the current information for use in assembling the body of management information (Column 7, lines 37-42).

31. With respect to claim 19, Ding discloses the external process comprises an expert engine (Column 7, lines 28-36).

32. With respect to claim 20, Ding discloses the expert engine is driven by a model (Column 8, lines 12-19).

33. With respect to claim 21, Ding discloses obtaining current data to be used in connection with managing at least a portion of the enterprise (Column 7, lines 37-42), the data from different ones of the repositories having formal and temporal inconsistencies (Column 12, lines 12-21), enhancing the formal consistency of data received from different ones of the repositories (Column 14, lines 57-65), temporarily storing portions of the enhanced data to enhance temporal consistency of the data (Column 12, lines 13-21, i.e. often different metrics are not updated at the same time), using a model of the portion of the enterprise to analyze the temporally and formally enhanced data and to generate resulting management data (Column 11, lines 19-30), distributing the management data in a time frame that is current relative to the current data obtained from the repositories (Column 7, lines 63-67 continued through Column 8, lines 12-19), and the identity of the current data changing adaptively over time based on the model and on the resulting management data that is to be distributed (Column 3, lines 47-56).

34. With respect to claim 22, Ding discloses current data is pulled from the repositories (Column 7, lines 5-7).

35. With respect to claim 23, Ding discloses current data is pushed from the repositories (Column 7, lines 22-24).

36. With respect to claim 24, Ding discloses storing the management data for later use (Column 9, lines 53-61).

37. With respect to claim 27, Ding discloses the current data is obtained in response to a need for the resulting management data to be distributed (Column 3, lines 48-57).

38. With respect to claim 28, Ding discloses as can be understood, that the metric data is continually collected over the course of a measurement interval, regularly placed into a registry of metrics, and then periodically sampled from the registry indirectly (Ding, Abstract, lines 10-13).

39. With respect to claim 29, Ding discloses as best as can be understood, that the "third, Analyze 406 can create a Visualizer file 470a, wherein the Visualizer file 470a is a description of the characteristics of the enterprise 100 as determined by the collected metrics and the user input" (Ding, Column 10, lines 57-62).

40. With respect to claim 30, Ding discloses processing enterprise data from distributed repositories in an assembly line fashion to produce management data that is useful in managing at least a portion of the enterprise (Column 7, lines 5-7), the

assembly line including separate executable agents to perform tasks on the data, the agents including (Column 6, lines 29-36):

- a. a cleansing agent to process data that would not otherwise be useful in producing the management data (Column 2, lines 63-64; Using the sampled metric data to build performance models for analysis and capacity planning i.e. , Sampling only data that is going to be useful in producing the management data and ignoring or discarding what is not sampled),
- b. a normalizing agent to normalize the data (Column 10, lines 29-36),
- c. a transformation agent to enhance the consistency of the data (Column 10, lines 42-45),
- d. an assembler agent to assemble data to form the management data (Column 10, lines 36-38), and
- e. a staging agent to form and stage data for further processing (Column 10, lines 47-49, continued through Column 11, lines 19-21),
- f. the sequence and tasks of the agents in the pipeline being adaptable to changes in the portion of the enterprise being managed (Column 11, lines 33-35).

41. With respect to claim 31, Ding discloses storing and updating, in a cube, multi-dimensional current data about a portion of an enterprise (Column 12, lines 11-18), storing, in a cube, data defining relationships between metrics used to manage a portion of the enterprise and the multi-dimensional current data (Column 6, lines 38-41),

storing, in a cube, metadata about the multi-dimensional current data, and using the cubes to access current data in responding to queries, to generate management information useful in managing the portion of the enterprise (Column 10, lines 33-45).

42. With respect to claim 32, Ding discloses accumulating current information about an enterprise from distributed repositories using separate executable agents organized in a network model (Column 6, lines 63-67, continued through Column 7, lines 1-15), the current information that is accumulated being determined by predefined analytical processes that are associated with functional aspects of the enterprise and that use the current information to produce functional information about the enterprise (Column 6, lines 63-67, continued through Column 7, lines 1-15), the enterprise belonging to a class of enterprises (Column 6, lines 63-67, continued through Column 7, lines 1-15), and processing the functional information to produce resulting management information (Column 7, lines 5-14), the processing being done in an application that is reusable for other enterprises belonging to the class (Column 7, lines 5-14).

43. With respect to claim 33, Ding discloses the class comprises manufacturers (Column 10, lines 11-28).

44. With respect to claim 34, Ding discloses the class comprises financial services enterprises (Column 10, lines 33-42).

Art Unit: 4152

45. With respect to claim 35, Ding discloses the functional aspects include at least one of financial, supply chain, information technology, and sales (Column 10, lines 33-42; Column 10, lines 11-28).

46. With respect to claim 36, Ding discloses a medium bearing instructions causing separate executable agents each to perform tasks on associated information that is changing over time, to produce current information (Column 2, lines 51-54), delivering inputs and outputs among agents to enable assembly of a body of aggregated and summarized management information (Column 2, lines 54-64 i.e. agent software collects metric data (takes the input) and stores sampled data into a registry (the output)), based on the current information, to be used to manage at least a portion of an enterprise (Column 2, lines 54-64).

47. With respect to claim 37, Ding discloses a medium bearing instructions obtaining current data to be used in connection with managing at least a portion of the enterprise (Column 7, lines 37-42), the data from different ones of the repositories having formal and temporal inconsistencies (Column 12, lines 12-21), enhancing the formal consistency of data received from different ones of the repositories (Column 14, lines 57-65), temporarily storing portions of the enhanced data to enhance temporal consistency of the data (Column 12, lines 13-21, i.e. often different metrics are not updated at the same time), using a model of the portion of the enterprise to analyze the temporally and formally enhanced data and to generate resulting management data

Art Unit: 4152

(Column 11, lines 19-30), distributing the management data in a time frame that is current relative to the current data obtained from the repositories (Column 7, lines 63-67 continued through Column 8, lines 12-19), and the identity of the current data changing adaptively over time based on the model and on the resulting management data that is to be distributed (Column 3, lines 47-56).

48. With respect to claim 38, Ding discloses a medium bearing instructions processing enterprise data from distributed repositories in an assembly line fashion to produce management data that is useful in managing at least a portion of the enterprise (Column 7, lines 5-7), the assembly line including separate executable agents to perform tasks on the data, the agents including (Column 6, lines 29-36):

- a. a cleansing agent to process data that would not otherwise be useful in producing the management data (Column 2, lines 63-64; Using the sampled metric data to build performance models for analysis and capacity planning i.e. , Sampling only data that is going to be useful in producing the management data and ignoring or discarding what is not sampled),
- b. a normalizing agent to normalize the data (Column 10, lines 29-36),
- c. a transformation agent to enhance the consistency of the data (Column 10, lines 42-45),
- d. an assembler agent to assemble data to form the management data (Column 10, lines 36-38), and

- e. a staging agent to form and stage data for further processing (Column 10, lines 47-49, continued through Column 11, lines 19-21),
 - f. the sequence and tasks of the agents in the pipeline being adaptable to changes in the portion of the enterprise being managed (Column 11, lines 33-35).
2. With respect to claim 39, Ding discloses a medium bearing instructions storing and updating, in a cube, multi-dimensional current data about a portion of an enterprise (Column 12, lines 11-18), storing, in a cube, data defining relationships between metrics used to manage a portion of the enterprise and the multi-dimensional current data (Column 6, lines 38-41), storing, in a cube, metadata about the multi-dimensional current data, and using the cubes to access current data in responding to queries, to generate management information useful in managing the portion of the enterprise (Column 10, lines 33-45).
3. With respect to claim 40, Ding discloses a medium bearing instructions accumulating current information about an enterprise from distributed repositories using separate executable agents organized in a network model, the current information that is accumulated being determined by predefined analytical processes that are associated with functional aspects of the enterprise and that use the current information to produce functional information about the enterprise, the enterprise belonging to a class of enterprises (Column 6, lines 63-67, continued through Column 7, lines 1-15),

and processing the functional information to produce resulting management information, the processing being done in an application that is reusable for other enterprises belonging to the class (Column 7, lines 5-14).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17, 25, and 26 are rejected as being unpatentable over Ding as applied to claims 2, 9, and 21 above in view of Hattori et al. (Patent No US 6,557,025 B1), hereinafter Hattori.

6. With respect to claim 17, Ding does not disclose that elements that conform to the network model declare their capabilities to one another. However, Hattori discloses that elements that conform to the network model declare their capabilities to one another (Column 18, lines 42-48). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the teachings of Ding which discloses a network model, with the teachings of Hattori which discloses that a network model uses inter-agent cooperation, in order to efficiently utilize the information distributed over a network.

7. With respect to claim 25, Ding does not disclose that the management data is distributed by notification to a process that uses the data. However, Hattori discloses that the management data is distributed by notification to a process that uses the data (Column 13, lines 24-34). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the teachings of Ding which discloses that the management data is distributed by the user, with the teachings of Hattori which discloses that the management section of the remote node sends notification, in order to distribute the management data without the user specifying a destination.

8. With respect to claim 26, Ding does not disclose that the management data is distributed by automated delivery of the data to a process. However, Hattori discloses that the management data is distributed by automated delivery of the data to a process (Column 18, lines 48-54). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the teachings of Ding which discloses that the management data is distributed by the user, with the teachings of Hattori which discloses that distributed and updated automatically or manually, in order to have each process up to date with any changes made to the management data.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicants disclosure.

a. Moran et al. (Patent No US 6633835 B1) discloses a system which includes a set of application monitoring and management tools that provide business critical application and network performance information to administrators such as CIOs and enterprise network managers.

b. Ginter et al. (Patent No US 6658568 B1) discloses efficient administration and support of electronic commerce and communications; methods and technologies for electronic rights administration and support services; techniques and arrangements for distributing administration and support services such as secure electronic transaction management/administration, electronic process control and automation, and clearing functions across and/or within an electronic network and/or virtual distribution environment.

51. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARSHALL MCLEOD whose telephone number is (571)270-3808. The examiner can normally be reached on Monday - Friday 7:30 a.m.-5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nabil El-Hady can be reached on (571) 272-3963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4152

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.M. 12/13/2007

/Nabil El-Hady/
Supervisory Patent Examiner, Art Unit 4152